

HOWARD L. CHURCHILL, SB# 79872

E-Mail: [churchill@lbbslaw.com](mailto:churchill@lbbslaw.com)

ANDJE MOROVICH, SB#251288

E-Mail: [morovich@lbbslaw.com](mailto:morovich@lbbslaw.com)

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

One Sansome Street

Suite 1400

San Francisco, California 94104

Telephone: (415) 362-2580

Facsimile: (415) 434-0882

Attorneys for KEYSTONE AMERICA, INC. dba

JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

THE FAMILY OF LELA KAYE HORNER:  
Harold Horner, Connie Britt, Andy Horner,  
Cherly Horner,

Plaintiffs,

v.

KEYSTONE AMERICA, INC., dba JONES  
AND LEWIS CLEAR LAKE MEMORIAL  
CHAPEL, and DOES 1-100,

Defendants.

CASE NO. C07-03441

**STIPULATION TO ALLOW DEFENDANT  
KEYSTONE AMERICA, INC. dba JONES  
AND LEWIS CLEAR LAKE MEMORIAL  
CHAPEL TO FILE A CROSS-  
COMPLAINT**

The parties to the above-entitled action stipulate as follows:

In the preceding Case Management Conference, the Court sent the parties out with the instructions to do basic discovery without prejudice to complete additional discovery at a later time with an eye for a possible early mediation. In response, Defendant, KEYSTONE AMERICA, INC. dba JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL (herein after referred to as “KEYSTONE”) has served basic written discovery on the parties and has received responses to that discovery. Additionally, the current parties have exchanged documents which the parties believe, at this point, constitute a complete exchange.

In addition to the foregoing, the deposition of Michael Murphy, the owner of Mullare, Murphy Funeral Home, located in Trinidad, Colorado, has been completed. Mr. Murphy’s deposition

transcript has been forwarded to Defendant KEYSTONE'S consultant in this matter. Based upon the consultant's review of the deposition transcript, it is KEYSTONE'S consultant's view that a cause of action exists against Mullare, Murphy Funeral Home for indemnification and/or contribution as a joint tortfeasor.

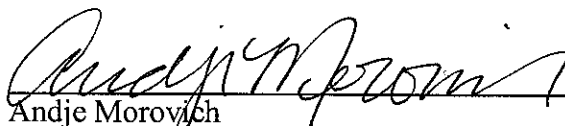
The parties further Stipulate that a motion to serve and file a Third-Party Complaint shall be waived notwithstanding FRCP 14(a).

SO STIPULATED.

DATED: July 18, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

By



Andje Morovich  
Attorneys for KEYSTONE AMERICA, INC. DBA  
JONES AND LEWIS CLEAR LAKE MEMORIAL  
CHAPEL

DATED: July \_\_, 2008

LAW OFFICE OF BRUCE E. KRELL

By

Michael Cohen, Esq.  
Attorneys for Plaintiffs, FAMILY OF LELA KAYE  
HORNER

GOOD CAUSE APPEARING,

It is hereby Ordered that the Proposed Third-Party Complaint for Indemnification, Contribution and Declaratory Relief, appended hereto as Exhibit A, shall be filed and served within the next thirty (30) days.

SO ORDERED.

DATED:

Honorable Wayne D. Brazil,  
UNITED STATE DISTRICT COURT MAGISTRATE

1 transcript has been forwarded to Defendant KEYSTONE'S consultant in this matter. Based upon the  
2 consultant's review of the deposition transcript, it is KEYSTONE'S consultant's view that a cause of  
3 action exists against Mullare, Murphy Funeral Home for indemnification and/or contribution as a  
4 joint tortfeasor.

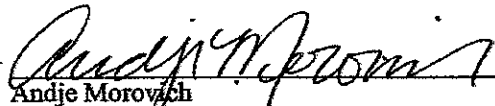
5 The parties further Stipulate that a motion to serve and file a Third-Party Complaint shall be  
6 waived notwithstanding FRCP 14(a).

7 SO STIPULATED.

8 DATED: July 18, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

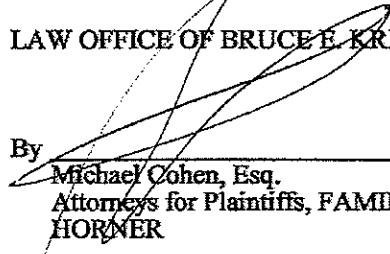
9  
10 By

  
Andje Morovich  
Attorneys for KEYSTONE AMERICA, INC. DBA  
JONES AND LEWIS CLEAR LAKE MEMORIAL  
CHAPEL

11  
12  
13 DATED: July 25, 2008

LAW OFFICE OF BRUCE E. KRELL

14  
15 By

  
Michael Cohen, Esq.  
Attorneys for Plaintiffs, FAMILY OF LELA KAYE  
HORNER

16  
17  
18  
19 GOOD CAUSE APPEARING,

20 It is hereby Ordered that the Proposed Third-Party Complaint for Indemnification, Contribution  
21 and Declaratory Relief, appended hereto as Exhibit A, shall be filed and served within the next thirty  
22 (30) days.

23 SO ORDERED.

24 DATED:

Honorable Wayne D. Brazil,  
UNITED STATE DISTRICT COURT MAGISTRATE

**CERTIFICATE OF SERVICE BY MAIL**

*United States District Court, Northern District of California, Oakland Division*  
Case No. CO7-03441 WDB

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to the action. My business address is One Sansome Street, Suite 1400, San Francisco, California 94104.

On July 29, 2008, I served the following document(s):

**STIPULATION TO ALLOW DEFENDANT KEYSTONE AMERICA, INC. dba JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL TO FILE A CROSS-COMPLAINT**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Michael Cohen, Esq.  
LAW OFFICE OF BRUCE E. KRELL  
345 Grove Street  
San Francisco, California 94102  
Tel.: 415.861.4414  
Fax: 415.431.4526  
**ATTORNEYS FOR PLAINTIFFS**

The documents were served by the following means:


☒ (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and (specify one):

☐ Deposited the sealed envelope or package with the U.S. Postal Service, with the postage fully prepaid.

☒ Placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, on the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope of package with the postage fully prepaid.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on July 29, 2008, at San Francisco, California.

  
Elaine Aurbrey

**EXHIBIT A**

HOWARD L. CHURCHILL, SB# 79872

E-Mail: [churchill@lbbslaw.com](mailto:churchill@lbbslaw.com)

ANDJE MOROVICH, SB# 251288

E-Mail: [morovich@lbbslaw.com](mailto:morovich@lbbslaw.com)

**LEWIS BRISBOIS BISGAARD & SMITH LLP**

One Sansome Street

Suite 1400

San Francisco, California 94104

Telephone: (415) 362-2580

Facsimile: (415) 434-0882

Attorneys for KEYSTONE AMERICA, INC.dba

JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

THE FAMILY OF LELA KAYE HORNER:  
Harold Horner, Connie Britt, Andy Horner,  
Cherly Horner,

Plaintiffs,

v.

KEYSTONE AMERICA, INC., dba JONES  
AND LEWIS CLEAR LAKE MEMORIAL  
CHAPEL, and DOES 1-100,

Defendants.

CASE NO. C07-03441 WDB

**DEFENDANT'S CROSS-COMPLAINT  
FOR INDEMNITY AGAINST MULLARE  
MURPHY FUNERAL HOME FOR:**

- 1. Total Equitable Indemnification;**
- 2. Apportionment of Fault/  
Contribution;**
- 3. Declaratory Relief**

**[Filed concurrently with Stipulation to Allow  
Cross-Complaint]**

KEYSTONE AMERICA, INC. dba JONES  
AND LEWIS CLEAR LAKE MEMORIAL  
CHAPEL,

Cross-Complainants,

v.

MULLARE, MURPHY FUNERAL HOME,  
INC. a Colorado Corporation, and ROES 1-100,

Cross-Defendants.

COMES NOW Cross-Complainants KEYSTONE AMERICA, INC. dba JONES AND  
LEWIS CLEAR LAKE MEMORIAL CHAPEL ("Cross-Complainants"), who hereby complain  
and allege, as follows:

**I. JURISDICTION**

1  
2 1. These Counterclaims arise out of the same transactions and occurrence as set forth  
3 in the underlying complaint brought by plaintiffs THE FAMILY OF LELA KAYE HORNER:  
4 Harold Horner, Connie Britt, Andy Horner, Cheryl Horner against defendant KEYSTONE  
5 AMERICA, INC. dba JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL. As such,  
6 subject matter jurisdiction is proper under 28 U.S.C. §§ 1331 and 1332.

7 2. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(a)(2) and  
8 1391(b)(2).

**II. PARTIES**

9  
10 1. At all times herein mentioned, Cross-complainant KEYSTONE AMERICA, INC.  
11 dba JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL was incorporated under the  
12 laws of the State of Delaware and was/is entitled to do business in the State of California.

13 2. Cross-Complainants are informed and believe, and thereon allege, that at all times  
14 mentioned herein and material hereto, Cross-Defendant, MULLARE, MURPHY FUNERAL  
15 HOME, INC., is a corporation, organized under the laws of the State of Colorado, and authorized  
16 to do business in the State of Colorado.

17 3. Cross-Complainants are uncertain of the true names and capacities of  
18 cross-defendants ROES 1 through 100, Inclusive, and sues said cross-defendants by such fictitious  
19 names. Cross-Complainants allege that each said ROE Cross-Defendant is responsible, as  
20 principal and/or agent, for the events alleged herein. Cross-Complainants will insert the true  
21 names and capacities of said fictitiously named Cross-Defendants when the same have been  
22 ascertained.

23 4. That Cross-Complainants are informed and believe, and thereon allege that at all  
24 times mentioned herein and material hereto, Cross-Defendants and ROES 1 through 100,  
25 inclusive, were the agents, servants, and employees and partners of the others, acting within the  
26 scope thereof. A reference to "Cross-Defendants," refers to these cross-defendants jointly and  
27 severally.  
28

5. Cross-Complainants are named as defendants in a complaint brought by THE FAMILY OF LELA KAYE HORNER: Harold Horner, Connie Britt, Andy Horner, Cherly Horner (collectively referred to as "HORNER FAMILY"), in the above-entitled lawsuit which was filed in the Superior Court for the State of California, County of San Francisco, Case No. C07-03441 WDB, attached as Exhibit A is the HORNER FAMILY complaint. The HORNER FAMILY complaint alleges negligence in connection with various cemetery and funeral services provided to the HORNER FAMILY for the burial of Lela Kaye Horner. The allegations of the complaint are incorporated herein.

### GENERAL ALLEGATIONS

6. Cross-Complainants deny any liability or responsibility to the HORNER FAMILY. For the sole purpose of establishing the issues herein, Cross-Complainants re-allege the allegations contained in the HORNER FAMILY's complaint and incorporate each and all of the allegations within the HORNER FAMILY'S complaint as though fully set forth herein.

7. Cross-Complainants are informed and believe, and thereon allege, that at the time and place of the incident alleged in the HORNER FAMILY'S complaint on file herein, Cross-Defendants, and each of them, were negligent, careless, and reckless in a manner which was the proximate cause of the injuries and damages, if any, sustained by the HORNER FAMILY.

8. Cross-Complainants are informed and believe, and thereon allege, that Cross-Defendants MULLARE, MURPHY FUNERAL HOME, INC., together and in conjunction with one another through themselves and as agents of one another (collectively referred to as "MULLARE MURPHY"), entered into an agreement with the HORNER FAMILY for the care and preservation of the body of Lela Kaye Horner and to provide funeral and viewing services for the HORNER FAMILY in Colorado.

9. Cross-Complainants are informed and believe, and thereon allege, that pursuant to the agreement between MULLARE MURPHY and the HORNER FAMILY, MULLARE MURPHY, agreed to transport the body of Lela Kaye Horner from the Colorado Springs Airport to the MULLARE MURPHY premises in Trinidad, Colorado where the body would be maintained and preserved in a manner that would allow for open casket funeral services. MULLARE



1 MURPHY would then transport the body from Trinidad to Branson, Colorado for funeral services  
2 and burial.

3 10. Cross-Complainants are informed and believe, and thereon allege, that pursuant to  
4 the agreement between MULLARE MURPHY and the HORNER FAMILY, MULLARE  
5 MURPHY had a duty to use such skill, prudence, and diligence, in performance of the various  
6 cemetery and funeral duties and responsibilities of professionals which are commonly possessed  
7 and exercised by licensed funeral homes in the performance of such tasks in its community.

8 11. Cross-Complainants are informed and believe, and thereon allege, that during the  
9 course of the MULLARE MURPHY'S possession of Lela Kaye Horner, MULLARE MURPHY  
10 negligently performed its duties and obligations owed to the HORNER FAMILY pursuant to the  
11 agreement to care for and preserve the body of Lela Kaye Horner such that an open casket service  
12 could be held in Colorado. As a result of MULLARE MURPHY'S negligent performance, the  
13 HORNER FAMILY suffered damages which are the subject of their San Francisco Superior Court  
14 Case complaint filed against Cross-Complainants. Should Cross-Complainant be found liable to  
15 the HORNER FAMILY for damages, such liability is derivative of MULLARE MURPHY'S  
16 negligence and breach of its duties and obligations owed to the HORNER FAMILY.

17 12. Cross-Complainants allege that in the event negligence of Cross-Defendants, and  
18 each of them, is determined to have been a proximate cause of the injuries and damages, if any,  
19 allegedly sustained by the HORNER FAMILY, then Cross-Complainants are entitled to full  
20 indemnity and contribution from said Cross-Defendants, and each of them, on a comparative fault  
21 basis and in an amount equal to the portion of the verdict or judgment herein, if any, which is  
22 attributable to the negligent acts or omissions of Cross-Defendants, and each of them.

23 **FIRST CAUSE OF ACTION**

24 **(Total Equitable Indemnification)**

25 13. Cross-complainant re-alleges and incorporates herein by reference each and every  
26 allegation set forth in paragraphs 1 - 12 though fully set forth herein.

27 14. MULLARE, MURPHY FUNERAL HOME, INC. a Colorado Corporation, and  
28 ROES 1-100, and each of them, are in the business of providing funeral services in the state of

Colorado, and participated in providing funeral services for plaintiffs in conjunction with the death of Lela Kaye Horner.

15. Cross-Defendants, and each of them, in their capacity as funeral service providers negligently handled, supervised, maintained, stored, shipped, and/or transported the body of Lela Kaye Horner in conjunction with providing funeral services to the HORNER FAMILY.

16. The principle action, set forth in the complaint, alleges, among other things, a right to recover, through subrogation and indemnity, losses against cross-complainant KEYSTONE AMERICA, INC. dba JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL for damages resulting from the presence of "purge" and inability to have an open casket ceremony for Lela Kaye Horner in Colorado.

17. Cross-Complainant is informed and believes and thereon alleges that if cross-complainant is found to be liable for the damages, if any, allegedly sustained by plaintiffs, then cross-defendants, and each of them, have an equitable duty to indemnify cross-complainant because of the active and primary nature of the conduct of the cross-defendants, and each of them, as contrasted with the passive and secondary nature of the conduct of this Cross-complainant.

18. As a direct and proximate result, Cross-complainant has been damaged in a sum which is currently not ascertainable, but which will be established according to proof at the time of trial.

19. Consequently, Cross-complainant KEYSTONE AMERICA, INC. dba JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL is entitled to total equitable indemnity, and contribution, for any liability among and from the aforesaid cross-defendants, and each of them, in exclusive proportion, for the damages and losses allegedly sustained by plaintiffs, by way of sums paid in settlement, or judgment rendered against KEYSTONE AMERICA, INC. dba JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL in the action based upon plaintiffs' complaint and/or on cross-complaints filed, or to be filed by others. Such indemnification and/or contribution shall include any and all attorneys' fees and court costs incurred by KEYSTONE AMERICA, INC. dba JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL in the defense of plaintiffs' complaint or in the defense of cross-complaints filed or to be filed herein.

1 KEYSTONE AMERICA, INC. dba JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL  
2 hereby tenders its defense to MULLARE, MURPHY FUNERAL HOME, INC. and ROES 1-100,  
3 and each of them, and demands that they indemnify, defend and hold KEYSTONE AMERICA,  
4 INC. dba JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL harmless from and against  
5 all allegations of plaintiffs' complaint herein.

6 WHEREFORE, judgment is prayed as hereafter set forth.

7 **SECOND CAUSE OF ACTION**

8 **(Apportionment of Fault/Contribution)**

9 20. Cross-Complainants refer to paragraphs 1 through 19 and incorporates the same  
10 herein by reference as though fully set forth.

11 21. Cross-Complainants are now faced with a loss, which, in good conscience, equity,  
12 and justice, Cross-Complainants should not be faced with by virtue of the conduct of  
13 Cross-Defendants, and each of them.

14 22. Each cross-defendant was responsible, in whole or in part, for the injuries, if any,  
15 suffered by plaintiffs.

16 23. By reason of the negligence of cross-defendants, and each of them, if any judgment  
17 or settlement occurs herein by which Cross-Complainants are required to make payment to the  
18 HORNER FAMILY, Cross-Complainants are entitled to contribution from Cross-Defendants in an  
19 amount commensurate with that portion of comparative fault attributable to the negligent acts and  
20 omissions of Cross-Defendants, and each of them.

21 24. If Cross-complainant KEYSTONE AMERICA, INC. dba JONES AND LEWIS  
22 CLEAR LAKE MEMORIAL CHAPEL is judged liable to plaintiffs for subrogation and  
23 indemnity, each cross-defendant should be required to: (1) pay a share of plaintiffs' judgment  
24 which is in proportion to the comparative negligence of that cross-defendant in causing plaintiffs'  
25 damages, and (2) to reimburse cross-complainant KEYSTONE AMERICA, INC. dba JONES  
26 AND LEWIS CLEAR LAKE MEMORIAL CHAPEL for any payment it makes to plaintiffs in  
27 excess of its proportional share of all cross-defendants' negligence.

28 WHEREFORE, judgment is prayed as hereafter set forth.

**THIRD CAUSE OF ACTION**

**(For Declaratory Relief)**

25. Cross-Complainants refer to paragraphs 1 through 24 and incorporates the same herein by reference as though fully set forth.

26. A dispute has arisen, and an actual controversy exists, between Cross-Complainants and Cross-Defendants, and each of them, concerning the respective rights, duties, and obligations of Cross-Defendants, and each of them, to indemnify or provide comparative contribution to Cross-Complainants in regard to a verdict or judgment, if any, rendered against Cross-Complainants in the above-entitled action by reason of the allegations of the HORNER FAMILY's complaint on file herein. Cross-Complainants respectfully requests a declaration of rights and duties of Cross-Defendants, and each of them, to Cross-Complainants.

27. It is the contention of the Cross-Complainants that in the event the acts and omissions of Cross-Defendants, and each of them, are determined to have been a proximate cause of the injuries and damages, if any, allegedly sustained by the HORNER FAMILY, then Cross-Complainants are entitled to indemnity or comparative contribution from Cross-Defendants, and each of them, in an amount commensurate with the degree of fault attributable to the negligence of Cross-Defendants, and each of them.

28. Cross-Complainants are informed and believe, and thereon allege, that Cross-Defendants, and each of them, deny any breach of duty on their part and further deny, by implication, that they are obligated to indemnify or provide comparative contribution to Cross-Complainants.

29. Cross-Complainants have incurred and will continue to incur attorney's fees, expert fees, costs and discovery expenses in the above-entitled action. The exact amount of said attorney's fees, expert fees, costs and discovery expenses incurred, or to be incurred, has not yet been ascertained. Cross-Complainants will seek leave of the Court, if necessary, to assert herein the true amount thereof in this Cross-Complaint when the amount has been ascertained. Cross-Defendants, and each of them, are obligated to Cross-Complainants for each and all of said attorney's fees, expert fees, costs and discovery expenses which have been incurred, or which will

1 be incurred, by Cross-Complainants in the above-entitled action, and cross-defendants, and each of  
2 them, should be ordered to pay to Cross-Complainants the true amount thereof upon the trial of the  
3 above-entitled action.

4 WHEREFORE, Cross-Complainants herein pray for judgment against cross-defendants,  
5 and each of them, as follows:

6 **PRAYER FOR RELIEF**

7 1. If Cross-Complainants are found to be liable to plaintiff in the case in chief, then  
8 for judgment to be rendered against Cross-Defendants, and each of them, for full, complete or  
9 partial indemnity in an amount commensurate with that degree of fault attributable to the  
10 negligence of Cross-Defendants, and each of them;

11 2. For a decree by this Court resolving all of the rights and liability of the parties, and  
12 each of them, with specific reference to Cross-Complainant's right of indemnity or comparative  
13 contribution from Cross-Defendants, and each of them;

14 3. For a declaration by this Court determining that Cross-Complainants are entitled to  
15 reimbursement by way of indemnification or comparative contribution from Cross-Defendants,  
16 and each of them, in respect to any and all settlements or compromises which may be entered into  
17 between Cross-Complainants and plaintiff, and that said reimbursement be determined upon the  
18 basis of the comparative fault of Cross-Defendants, and each of them, in relation to the total sum  
19 of any such settlement;

20 4. For all attorney's fees, expert fees, costs and discovery expenses incurred, or to be  
21 incurred, by Cross-Complainants as a defendant in the above-entitled action, according to proof;

22 5. For costs of suit incurred herein; and

23 6. For such other and further relief as the Court may deem just and proper.

24 DATED: July 18, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

25  
26 By

  
Howard L. Churchill

Andje Morovich

Attorneys for KEYSTONE AMERICA, INC. dba JONES  
AND LEWIS CLEAR LAKE MEMORIAL CHAPEL

**EXHIBIT A**

E-filing

ORIGINAL  
FILED  
JUN 29 2007  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

ADR

WDB

90  
559 8707  
cell - 415 264 2140  
1 Michael Cohen - #98066  
2 LAW OFFICES OF BRUCE E. KRELL  
3 Grove Law Building  
4 345 Grove Street  
5 San Francisco, CA 94102  
6 415/861-4414  
7 Fax: 415/431-4526  
8 Attorney for Plaintiffs

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

9 THE FAMILY OF LELA KAYE HORNER:  
10 Harold Horner, Connie Britt, Andy Horner,  
11 Cheryl Horner,

No.

007-03441

COMPLAINT

11 Plaintiffs,

12 vs.

13 Keystone America Inc., dba Jones and Lewis  
14 Clear Lake Memorial Chapel, and DOES 1-100,

15 Defendants.

16 Plaintiffs, by and through counsel, hereby complain against Defendants as follows:

17 JURISDICTION

18 1. This action arises out of the mis-handling, by Defendant Cemetery and Funeral

19 Licensees, of the body of Plaintiffs' Decedent LELA KAYE HORNER. Jurisdiction is founded  
20 upon 28 USC 1332, in that the Plaintiffs are citizens of California, and the named Defendant is a  
21 citizen of Delaware, where it is incorporated, and Florida, where its principal place of business is  
22 located.

23 INTRA-DISTRICT ASSIGNMENT

24 2. A substantial part of the events and/or omissions complained of herein occurred in  
25 Lake County, California, and this action is properly assigned to the Oakland or San Francisco  
26 Divisions of the United States District Court for the Northern District of California.



**PLAINTIFFS**

3. Plaintiff HAROLD HORNER is the Husband of Decedent LELA KAYE HORNER; he is a citizen of the State of California.

4. Plaintiff CONNIE BRITT is the Daughter of Decedent LELA KAYE HORNER; she is a citizen of the State of California.

5. Plaintiff ANDY HORNER is the Son of Decedent LELA KAYE HORNER; he is a citizen of the State of California.

6. Plaintiff CHERYL HORNER is the Daughter of Decedent LELA KAYE HORNER; she is a citizen of the State of California.

7. Plaintiff LARADA HORNER is the Sister of Plaintiff HAROLD HORNER; she is a citizen of the State of New Mexico.

8. The HORNER family is, and at all times relevant was, an extremely close knit family, regardless whether the family members lived in California where LELA and HAROLD had lived for 24 years, or in the Colorado/Texas/New Mexico area, where LELA and HAROLD grew up and met.

**DEFENDANTS**

9. Defendant KEYSTONE AMERICA, INC. dba JONES AND LEWIS CLEAR LAKE MEMORIAL CHAPEL, at all times herein mentioned was a corporation, organized in Delaware, with its principal place of business in Florida, and licensed by the State of California to engage in the cemetery and funeral profession.

10. Plaintiff is informed, believes and thereon alleges that, at all times herein mentioned, Defendants DOES 1 through 40, inclusive, and each of them, were and are individuals, corporations or non-incorporated entities, licensed under California laws to perform various functions in the cemetery and funeral profession, including but not limited to the following functions: Cemetery Manager, Crematory Manager, Cemetery Broker, Cemetery Broker Additional, Cemetery Salesperson, Cremated Remains Disposer, Funeral Director, and/or



1 Embalmer, and were engaged in those functions as agents and/or employees of the above-  
2 mentioned corporate Defendants, and each of them, in Lake County, California; and, at all times  
3 herein mentioned, were acting within the course and scope of this agency and/or employment.

4 11. Plaintiff is informed, believes and thereon alleges, that, at all times herein  
5 mentioned, Defendants DOES 1 through 60 inclusive, and each of them, were engaged and/or  
6 employed in various capacities in the cemetery and funeral profession, including but not limited  
7 to the following capacities: Cemetery Manager, Crematory Manager, Cemetery Broker, Cemetery  
8 Broker Additional, Cemetery Salesperson, Cremated Remains Disposer, Funeral Director, and/or  
9 Embalmer, acting in the aid or assistance of the named Defendants and each of them, and acting  
10 within the course and scope of this engagement, agency and/or employment.

11 12. Plaintiff does not know the true names and capacities, whether corporate,  
12 associate or individual, of Defendants DOES 1 through 100, inclusive, and therefore sues them  
13 by those fictitious names. Plaintiff is informed and believes, and thereon alleges, that each of  
14 those Defendants was in some manner negligently and legally responsible for the events and  
15 happenings alleged in this complaint and for plaintiff's injuries and damages.

16 13. Plaintiff is informed and believes, and thereon alleges, that, at all times  
17 mentioned, each of the Defendants, named and DOES, was the agent and employee of each of  
18 their codefendants, and in doing the things alleged in this complaint were acting within the  
19 course and scope of that agency and employment. Moreover, the conduct of each Defendant  
20 herein was authorized and/or ratified by each of the remaining Co-Defendants; and each  
21 Defendant, when acting as a principal, was negligent in the selection and hiring of each other  
22 Defendant as an agent or employee.

### 23 FACTS

24 14. On or about July 7, 2005, LELA died, at age 50, following a long and decimating  
25 illness.

26 15. The following day, Plaintiffs HAROLD HORNER, CONNIE BRITT, ANDY

1 HORNER and CHERYL HORNER, along with LELA's parents and LELA's sisters, met with a  
2 representative of Defendants and each of them and HAROLD HORNER contracted with  
3 Defendants and each of them to embalm LELA's body and provide other related services so that  
4 the family, both in Northern California and later in Colorado could honor her with a traditional  
5 service, and to see her a last time, more as they remembered her from before the cruel illness  
6 which struck her down too early in life.

7 16. The Northern California service was scheduled for the following Tuesday, July  
8 12<sup>th</sup> in Lake County. The Colorado service was scheduled for Saturday, July 15<sup>th</sup>, in Branson,  
9 Colorado.

10 17. Apparently because "nobody (at least from the staff of Defendants and of each of  
11 them) works on the weekend", LELA's body was not embalmed until Tuesday morning, the 12<sup>th</sup>;  
12 and, for reasons unknown, the embalming was done, apparently hurriedly, by an apprentice, who,  
13 shortly thereafter, was no longer employed by Defendants and each of them. The embalming was  
14 extremely poorly done.

15 18. At noon on the 12<sup>th</sup>, the family arrived on schedule to view LELA's body  
16 privately. The family was kept waiting for over a half hour; and, when family members were  
17 shown the body, they were shocked.

18 19. LELA's body, especially her face and throat, was bloated or swollen to the point  
19 where she was unrecognizable. Further, her jaw line and the wig that was placed on her head  
20 were distorted by the way her head had been propped up, such that her son had to request a  
21 representative of Defendants and each of them to try to fix it.

22 20. Additionally, representatives of Defendants and each of them conducted their  
23 other duties and relations with the family so carelessly as to destroy for the family the important,  
24 life passage experience, help and support for which it is Defendants' and each of their  
25 professional duty to provide, and for which help and support the family was so dependent upon  
26 Defendants and each of them. Instead of this help and support, Defendants and each of them

1 provided the following:

2 a. A representative of Defendants and each of them, whose specific duty it  
3 was to help and support the family at the time of the viewing, obsessively regaled the family with  
4 a discussion of his Parkinson's condition, and his impending retirement to which he was looking  
5 forward, stating that this most delicate of occasions for the family was his last "job".

6 b. This gentleman also brought the wrong fliers to the Chapel service, so he  
7 had to drive back to the offices of Defendants and each of them and get the right ones; and he  
8 was consequently late such that a number of people did not receive the fliers in time for the  
9 service.

10 c. Defendants and each of them, additionally, failed to place the obituary in  
11 the local papers in time, so a number of people who would have come had they seen it, could not.

12 d. Also particularly disconcerting, at the least, to the family, who were  
13 naturally extremely sensitive because of their vulnerability in the circumstances, was the vast  
14 discrepancy between the price the representative of Defendants and each of them had discussed  
15 with many of the family present on the 8<sup>th</sup> (\$2,895.00, "including everything"), and the \$7,500.00  
16 bill which Defendants and each of them presented to Plaintiffs HAROLD HORNER, ANDY  
17 HORNER, ELVA HORNER and LARADA HORNER on the 11<sup>th</sup>. After Plaintiff LARADA  
18 HORNER demanded an explanation, a representative of Defendants and each of them told the  
19 family only that the many items on the bill which Plaintiff HAROLD HORNER had not chosen  
20 to use and which were never discussed with him were part of a "package deal"; but no "package  
21 deal" had ever been discussed with anyone in the family.

22 21. The awful effects of the wrongdoing of Defendants and each of them, both  
23 materially and emotionally, continued in Colorado.

24 a. To begin with, Defendants and each of them failed to place the obituary in  
25 the local paper in Colorado; then, the obituary that Defendants and each of them placed in the  
26 local paper in LELA's birthplace, in nearby Clayton, New Mexico, was missing important

1 information.

2           b.       On Friday, the 15<sup>th</sup>, the local mortician in Colorado, Mr. Murphy, checked  
3 the body, found "purge" coming out of the corner of the mouth, and did what he could to fix the  
4 problem temporarily, knowing that he would have to do certain things before the service the  
5 following day, Plaintiff HAROLD HORNER having decided to wait until the next day to see his  
6 wife for the last time, at the hometown church where they were married 32 years before.

7           c.       However, the consequences of the execrable job of embalming by  
8 Defendants and each of them, which was so bad there was nothing Mr. Murphy could do to  
9 remedy it, resulted in Plaintiff HAROLD HORNER being deprived of his last look at his wife.

10           (1)     On checking the body the following morning, Mr. Murphy found  
11 yet more "purge", the pillow partially soaked, and a noticeable odor.

12           (2)     Mr. Murphy did what he could; but there was no chance of  
13 reversing the consequences of Defendants' and each of their extraordinarily bad embalming; and,  
14 when he opened the casket later that day at the church to do what he hoped would be sufficient  
15 touch up to allow the family its last viewing, he discovered that the "purge" had accelerated to  
16 the point where the entire lining was soaked from head to toe and the odor had become a lot  
17 worse; so, he called in LELA's sister, and another family member, Plaintiff CHERYL  
18 HORNER's fiancé', Ted Christensen; and the then unavoidable decision was made to abandon  
19 hope for an open casket service, thereby unhappily denying the family and friends gathered there  
20 their final chance to see LELA the one last time which is so significant for bereaved families and  
21 close friends.

22                   **FIRST CAUSE OF ACTION [Breach of Contract]**

23           22.     PLAINTIFFS refer to paragraphs 1 through 21, inclusive, of this Complaint and  
24 by this reference make them a part hereof.

25           23.     From and after the time of contracting, Defendants, and each of them, so  
26 negligently failed to exercise the proper degree of knowledge, skill and care in attending to their

1 and each of their duties pertaining to LELA's body and to the Plaintiff members of LELA's  
2 family that those PLAINTIFFS and each of them were caused to suffer the injuries and damages  
3 alleged herein.

4 24. The contract was written.

5 25. The contracting Plaintiff members of LELA's family performed all their  
6 obligations to Defendants and each of them.

7 26. As a legal and proximate result of the acts of Defendants and each of them, the  
8 Plaintiff members of LELA's family were caused to sustain the herein described injuries and  
9 damages.

10 WHEREFORE, PLAINTIFFS pray judgment as set forth below.

11 **SECOND CAUSE OF ACTION [Negligence]**

12 27. PLAINTIFFS refer to paragraphs 1 through 31, inclusive, of this Complaint and  
13 by this reference make them a part hereof.

14 28. Defendants and each of them performed their professional duties to the Plaintiff  
15 members of the HORNER family, including but not limited to Cemetery Manager, Crematory  
16 Manager, Cemetery Broker, Cemetery Broker Additional, Cemetery Salesperson, Cremated  
17 Remains Disposer, Funeral Director, and/or Embalmer, so negligently as to cause said  
18 PLAINTIFFS to sustain the herein described injuries and damages.

19 29. PLAINTIFFS are informed and believe, and thereon allege, that, in engaging in  
20 the conduct alleged herein, Defendants and each of them acted fraudulently and in conscious  
21 disregard of Plaintiff's rights under the meaning of California Civil Code Section 3294; and that  
22 this despicable conduct was ratified by managing agents, officers and/or directors of Defendants  
23 and each of them.

24 WHEREFORE, Plaintiffs, and each of them, pray judgment against Defendants, and each  
25 of them, for the following:

26 A. General damages according to proof;

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

LAW OFFICES OF BRUCE E. KRELL, INC.

By /S/

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

LAW OFFICES OF BRUCE E. KRELL, INC.

By /S/